Star Dental Products, a Division of Den-Tal-EZ, Inc. *and* District Lodge # 98, International Association of Machinists & Aerospace Workers, AFL–CIO. Cases 4–CA–18767 and 4–CA–19065

July 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On December 7, 1990, Administrative Law Judge David L. Evans issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions and a brief answering the exceptions and supporting the cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, as modified here,[1] and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Star Dental Products, a Division of Den-Tal-EZ, Inc., Lancaster, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Insert the following as paragraphs 2(b) and (c) and reletter the subsequent paragraphs.

''(b) Recognize the Union upon resumption of bargaining in good faith and for 6 months thereafter as if the initial year of Board certification has not expired.

''(c) Reinstate its unlawfully withdrawn March 15, 1990 contract offer and afford the Union a reasonable period of time to accept that offer or to make counterproposals in light of changed circumstances.''

[1] The General Counsel has filed cross-exceptions to the judge's failure to address a complaint allegation that the Respondent violated Sec. 8(a)(5) by its unilateral announcement that it would return to its former merit review procedures. The Respondent has admitted that on June 8, 1990, its president unilaterally announced to employees that the Respondent had determined to return to its former merit review procedures in October 1990. Consequently, we find merit in the cross-exceptions and conclude that the Respondent's announced decision to reinstitute merit review procedures, with the implicit prospect of merit wage increases and promotions, represented an additional unilateral change in violation of Sec. 8(a)(5).

[2] In accord with the General Counsel's cross-exceptions, we shall modify the recommended Order to include specific affirmative language reflecting the judge's recommended remedy extending the certification year for 6 months and requiring the Respondent to resume bargaining by reinstating its March 15, 1990 contract proposal, giving the Union a reasonable period of time in which to accept or to respond to that proposal. In finding the contract proposal reinstatement remedy appropriate, we rely on *Mead Corp.*, 256 NLRB 686 (1981), enfd. 697 F.2d 1013 (11th Cir. 1983).

We note that in *Mead* the Board suggested 20 days as a ''guideline'' for what would be a ''reasonable period of time'' for the union to consider the contract proposal which the employer was directed to reinstate. The Board noted that the union in that case had itself indicated at one point that 20 days was what it needed to act on the proposal. The Board incorporated the 20-day period into its Order. In this case, the Respondent withdrew its proposal 5 days before the Union was scheduled to hold a ratification vote. Unlike in *Mead*, however, the Respondent not only unlawfully withdrew its proposal but also attempted to sever the Union's ties to the bargaining unit by unlawfully withdrawing recognition. In these circumstances, we find that more time than the 5 days originally remaining before the ratification vote may reasonably be required for the Union to consult unit employees and to formulate a response to the reinstated proposal. In order to provide guidance to the parties concerning this matter, we find that a reasonable time for the Union's consideration of the reinstated offer would be 30 days from the time of its reinstatement, absent unusual circumstances.

Barbara C. Joseph, Esq., for the General Counsel.
Michael F. Kraemer, Esq. (White and Williams), of Philadelphia, Pennsylvania, for the Respondent.
Eugene Marcaccio, Grand Lodge Representative, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge. This case was tried in Lancaster, Pennsylvania, on October 17, 1990,[1] upon charges that were filed under the National Labor Relations Act (the Act) by District Lodge #98, International Association of Machinists & Aerospace Workers, AFL–CIO (the Union) against Star Dental Products, a Division of Den-Tal-EZ, Inc. (the Respondent), and upon a complaint that was issued by the General Counsel on August 23 alleging that Respondent had violated Section 8(a)(1) of the Act by certain announcements to employees and alleging that Respondent had violated Section 8(a)(5) by its (admitted) withdrawal of recognition of the Union during the year following a Board certification of the Union and further that Respondent had violated Section 8(a)(5) by certain unilateral actions following said withdrawal of recognition.[2] Respondent duly filed an answer admitting jurisdiction but denying the commission of any unfair labor practices.

On the entire record[3] and after considering the briefs which have been filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent produces dental equipment at its Lancaster, Pennsylvania facility. During the year preceding issuance of the complaint, in the course and conduct of its business operations, Respondent derived gross revenues in excess of $500,000 and purchased and received materials valued in excess of $50,000 directly from suppliers located at points outside Pennsylvania. Therefore, Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates are in 1990 unless otherwise specified.

[2] The Union filed the charge in Case 4–CA–18767 on March 26, and it filed the charge in Case 4–CA–19065 on July 16.

[3] The unopposed motions to correct the record are granted. The transcript p. 57, L. 22, is corrected to change ''counseled'' to ''counsel.''

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Respondent employs about 90 production and maintenance employees in the unit described below. On April 21, 1989, the Board certified the Union as the collective-bargaining representative of the employees in said unit. The parties met and bargained on 24 different dates between July 31, 1989, and March 15. Before the March 15 meeting, Union Representative Clark Ruppert, Jr. told Respondent's negotiating committee, headed by Attorney Michael F. Kraemer, that the Union wanted the Company's ''last, best and final offer'' by March 15. On March 15, Kraemer presented a complete proposal, incorporating all previous ''tentative'' agreements, and restating Respondent's position on the open items. Ruppert asked Kraemer if that was ''their last best and final offer.'' Kraemer replied, ''This is final. I don't like the term 'best and final.''' After the union committee reviewed the offer, Ruppert told Kraemer that ''we are going to take it to the membership on the 25th'' of March.[4]

On March 20, Respondent's attorney sent Ruppert a letter stating:

> This letter is to inform you that the company now has a good faith basis for believing that the Machinists' Union no longer enjoys the support of a majority of the bargaining unit employees. In light of this development, we are withdrawing, effective immediately, the company's proposal made on March 19 [sic], 1990.

On March 26, Ruppert responded by letter of that date requesting continued bargaining. Respondent did not reply to Ruppert.

The parties stipulated that, without prior notice to or consultation with the Union, Respondent, on or about June 8: (1) granted the unit employees a wage increase of 4 percent; (2) gave the unit employees an economic adjustment equivalent to a 4-percent wage increase retroactive to October 1989; and (3) instituted a policy of allowing employees to carry over a maximum of 5 days of sick leave annually. These are the unilateral actions alleged in the complaint as violations of Section 8(a)(5) of the Act.

The complaint further alleges as violations of Section 8(a)(1) of the Act:

> On or about June 8, 1990 the Respondent, acting through its agent and representatives, held a meeting of its unit employees at the facility and engaged in the following conduct:
>
> (a) Informed them that the Respondent had stopped negotiating with the Union and had no intention of resuming bargaining with theUnion.
>
> (b) [Company President] Richard Tresfz informed them that they would be receiving a four (4) percent pay raise immediately because the Union no longer represented them.

Respondent did conduct a meeting on June 8, at which, according to a stipulated transcription, Kraemer told the employees, inter alia:

> In April of last year, a majority of the employees voted for the Union and the committee from the shop. Those negotiations took a while and the parties failed to reach agreement. We then were presented, in the middle of March, with a petition signed by a majority of the people who were working for the Company and the petition said that the majority no longer wished to be represented by the Union. When the Company received that petition, the Company then withdrew its last offer and communicated that to the Union, as well as to the employees, and there have been no sessions, no collective bargaining meetings, since that date.

Kraemer went on to say that because of the presentation of the petition, the Respondent's position is lawful and ''the company has no further bargaining obligation.''

According to the same transcript, Tresfz followed Kraemer and announced that, as a ''non-Union shop'' the Company was free to change policies and benefits, that it was in the process of doing so, and that the employees were getting a 4-percent wage increase.

As Kraemer indicated would be the case, there has been no further bargaining between the parties.

Employee Barry Boyer filed a decertification petition on April 23, attaching the employee petition referred to above by Kraemer. The decertification petition was dismissed by a Regional Director's letter of May 30, which states that the Region had decided that, because of the Respondent's refusal to bargain as alleged in this case, no question concerning representation could be raised, citing *Big Three Industries*, 201 NLRB 197 (1973).

B. *Analysis and Conclusions*

The purpose of the Act is to promote industrial peace. To that end, the Board has consistently interpreted the statutory framework to require that its certifications of collective-bargaining representatives be essentially uncontestable for a period of 12 months. *Kimberly-Clark*, 61 NLRB 90 (1945).

In *Brooks v. NLRB*, 348 U.S. 96 (1954), the Supreme Court approved the *Kimberly-Clark* rule stating that a certification based on an election must be ''unusual circumstances'' such as (1) a schism within the certified union, (2) the defunctness of the union, or (3) radical fluctuation in the size of the bargaining unit within a short period of time. Absent such circumstances, ''self-help,'' in the form of a refusal to bargain based on doubts about a union's continuing majority status, is available only after the expiration of the certification year. As stated by Justice Frankfurter at 348 U.S. 103:

> The underlying purpose of this statute is industrial peace. To allow employers to rely on employees' rights in refusing to bargain with the formally designated union is not conducive to that end; it is inimical to it.

The employee right referred to was the employees' right to express in a petition to their employer their dissatisfaction with the certified union, the employee right on which Respondent relies herein.

Respondent suggests the occurrence of no unusual circumstance the same as, or even remotely similar to, the three exceptions to the *Kimberly-Clark* rule that are listed in

[4] These quotations, with marks supplied, are taken from Ruppert's testimony which was not disputed.

Brooks. The only ''unusual circumstance'' advanced by Respondent as a defense for its actions is a March 20 receipt of an employee petition expressing a desire to terminate representation by the certified collective-bargaining representative, precisely the defense asserted, and found lacking, in *Brooks.*

Of course, subsequent to *Brooks* the Board has consistently, and specifically, held that a petition reflecting such a ''change of mind'' by employees during the certification year does not constitute an ''unusual circumstance'' under *Brooks*.[5] For this reason I rejected Respondent's offers of testimony about the presentation of the petition to management, and the petition itself, as irrelevant.[6]

The Respondent cites cases that preceded *Brooks*[7] and cases that did not involve the issue of withdrawal of recognition during the certification year,[8] but nowhere in its brief does Respondent cite a post-*Brooks* case that stands for the proposition that such an employee petition, alone, gives an employer license to withdraw recognition within the certification year.

The closest Respondent's brief comes to advancing some ostensible basis for its actions is the following statement:

> The only question concerning the lawfulness of Star Dental's conduct relates to the fact that the refusal to bargain occurred eleven months after the Board certification issued, rather than one year afterwards. This should make no difference, as the one year standard ''is not an absolute rule without exception.'' *NLRB v. Satilla Rural Electric*, 322 F.2d 251, 253, 47 LC ¶ 18,389 (5th Cir. 1963).[9]

The entire sentence from which Respondent takes the *Satilla* quotation is:

> Moreover, while it is not an absolute rule without exception that once a certification is made the Union's representative must continue to be recognized for at least a year, see *NLRB v. Florida Citrus Canners Cooperative*, 5 Cir., 288 F.2d 630, *nevertheless it is also true that the Company is not relieved of its duty to bargain with a Union within the certification year merely because a majority of employees may have defected from the Union*. [Emphasis added.]

The Fifth Circuit, citing *Brooks*, accordingly rejected the precise contention made by Respondent here.

Finally, Respondent cites *Alva Allen Industries*, 369 F.2d 310 (8th Cir. 1966). In that case the Eighth Circuit found an ''unusual circumstance'' under *Brooks*, which justified a certification-year refusal to bargain, in the union's abandonment of replaced strikers and a concurrent refusal by the union to represent strike replacements. Here, the Union was actively seeking bargaining on behalf of all employees whom it represented at the time of the withdrawal of recognition, and continued to do so to the end, and after the end, of the certification year.[10]

The Eighth Circuit in *Alva Allen Industries* found that, while the employer withdrew recognition 11 days short of the end of the certification year, there had been bargaining for a ''reasonable period'' of time under *Brooks*. It also held that, given the circumstance of the union's abandonment of the employees whom it represented, there was no possibility of agreement if the parties bargained any longer, and no purpose in requiring the employer to bargain for 11 additional days. In this case, any criterion of reasonableness would have called for at least 5 more days of recognition of, and bargaining with, the Union. That meager amount of time may well have resulted in 10 acceptance of Kraemer's complete, ''firm,'' proposal of March 15, and therefore a contract. Of course, Respondent knew that there is no explanation for the precipitous withdrawal of recognition on March 20 other than that Respondent wished to avoid the sanction of another well-established rule—majority status may not be questioned during the term of a contract—in the event that the union had accepted the March 15 offer.

In summary, Respondent seized on the then legally meaningless employee petition[11] as a mechanism for escape from its statutory duty to bargain when it would have been more ''reasonable'' to follow the plainly stated, Supreme Court-approved law, and allow the bargaining processes to continue for at least 5 more days. (That is, if ever a case warranted invocation of the *Brooks* presumption, this is it.)

Because Respondent was not privileged to thusly withdraw recognition from the Union before the end of the certification year, it follows that its withdrawal of recognition on March 20 was a violation of Section 8(a)(5) and (1) of the Act, as were its stipulated unilateral actions, as I find and conclude.

Moreover, it was an independent violation of Section 8(a)(1) of the Act for Kraemer to have told the employees that Respondent would no longer bargain with the Board-certified collective-bargaining representative. *Van Dorn Plastic Machinery Co*., 265 NLRB 864 (1982); *May Department Stores Co*., 191 NLRB 928 (1971), Chairman Miller dissenting on this point.

Finally, Tresfz announced, in effect, that, as a result of Respondent's unlawful withdrawal of recognition, Respondent was able to, and was going to, grant to the unit employees retroactive and future wage increases. This announcement violated Section 8(a)(1) of the Act in two different respects. First, the announcement itself ties the benefits directly to Re-

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[5] *Bluefield Produce Co*., 117 NLRB 1660 (1957); *Peninsula Asphalt Co*., 127 NLRB 136, 146 (1960); *Holly-General Co*., 129 NLRB 1098, 1103 (1961).

[6] On brief, Respondent urges reconsideration. Research has confirmed my opinion stated at the hearing that the creation and presentation of such a petition, alone, during a certification year has not been held to be a justifiable basis for a withdrawal of recognition since the 1954 decision of the Supreme Court in *Brooks*. Therefore, the document and testimony were, indeed, irrelevant, and I adhere to my rulings.

[7] *Carson Pirie Scott & Co*., 69 NLRB 935 (1946); *Jasper Wood Products Co*., 72 NLRB 1306 (1947); *NLRB v. Globe Automatic Sprinkler Co*., 199 F.2d 64 (3d Cir. 1952); and *Mid-Continent Petroleum Corp. v. NLRB*, 204 F.2d 613 (6th Cir. 1953). Reprehensibly, Respondent cites the last two cases without mention of the fact that they were considered, and rejected, in *Brooks.*

[8] *Hemet Casting Co*., 260 NLRB 437 (1982) (withdrawal of recognition after a contract expired); *Kaydee Metal Products Corp*., 195 NLRB 687 (1972) (withdrawal of recognition after certification year expired).

[9] Br. 7 and 8.

[10] On the withdrawal of recognition issue, *Alva Allen Industries* is the only authority that Respondent's counsel cites with an degree of integrity. While easily distinguishable, at least *Alva Allen Industries* came after *Brooks* and involves the same substantive issue. Counsel's other ''authorities'' were before *Brooks* or involved other issues. See fns. 7 and 8. Those citations, and Counsel's disingenuous half-quote of *Satilla Rural Electric*, are a disservice to this court and beneath any acceptable standard of advocacy by a member of the bar.

[11] See *Big Three Industries*, supra.

spondent's unlawful actions, and it thereby became part of the unlawful act itself. Second, by the announcement the employees were being told that they were being rewarded for the putative repudiation of the Union, a lesson not likely to be forgotten by employees if a timely decertification effort is subsequently pursued.

Therefore, Tresfz' June 8 announcement, as well as Kraemer's, tended to interfere with, restrain, and coerce the unit employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act, as I further find and conclude.

THE REMEDY

Having found that Respondent has engaged in certain violations of Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act. In this regard I shall recommend that the certification be extended for an additional 6 months and that the Respondent be obligated to bargain with the Union during that period as if the year following certification had not expired. Such an extension will provide the parties with a reasonable interval in which to resume negotiations and, possibly, reach agreement, without unnecessarily delaying an otherwise timely exercise of the employees' right to terminate their representation by the Union, if they hereafter so desire. See *Dominguez Valley Hospital*, 287 NLRB 149, 151 (1987).

In order to restore, as near as possible, the status quo ante, I shall further recommend that when bargaining pursuant to this order begins, Respondent shall be required to reinstitute, and reoffer, its March 15, 1990 offer to the Union. The Union shall be given a reasonable amount of time to accept the offer or to make counterproposals in light of changed circumstances.

CONCLUSIONS OF LAW

1. Star Dental Products, a Division of Den-Tal-EZ, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District Lodge #98, International Association of Machinists & Aerospace Workers, AFL–CIO is a labor organization within the meaning of Section 2(6) and (7) of the Act.

3. The following employees of Respondent constitute an appropriate unit for bargaining under Section 9(a) of the Act.

> *INCLUDED*: All production and maintenance employees, including Company temporary employees.
>
> *EXCLUDED*: All other employees including agency temporary employees, research and development employees, production contract department employees, office clerical employees, guards and supervisors as defined in the Act.

4. At all time since April 21, 1989, the Union has been, and is, the exclusive representative of the employees in the above-described unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. Respondent violated Section 8(a)(1) of the Act on June 8, 1990, by the following acts and conduct:

(a) Telling its employees that it had stopped negotiating with the Union, and telling its employees that Respondent had no intention of resuming bargaining with the Union, at a time when it had a lawful obligation to recognize and bargain with the Union.

(b) Telling its employees that they would be receiving increased benefits because the Union no longer represented them when, in fact, the Union lawfully did represent them.

6. Respondent violated Section 8(a)(5) and (1) of the Act on March 20, 1990, by withdrawing recognition of the Union as the exclusive collective-bargaining representative of the employees in the above-described unit, and by thereafter failing and refusing to recognize the Union as the exclusive collective-bargaining representative of the employees in said unit.

7. Respondent violated Section 8(a)(5) and (1) of the Act on June 8, 1990, by granting wage and other benefit increases to the employees in the above-described unit without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain on such matters as the exclusive collective-bargaining representative of the employees in said unit.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Star Dental Products, a Division of Den-Tal-EZ, Inc., Lancaster, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling its employees that it had stopped negotiating with the Union, or telling its employees that it has no intention of resuming bargaining with the Union, at a time when it has a lawful obligation to recognize and bargain with the Union.

(b) Telling its employees that they will be receiving increased benefits because the Union no longer represents them when, in fact, the Union lawfully does represent them.

(c) Refusing to bargain with District Lodge #98, International Association of Machinists & Aerospace Workers, AFL–CIO, by:

(1) Withdrawing recognition of the Union as the exclusive collective-bargaining representative of the unit employees and by thereafter failing and refusing to recognize the Union as the exclusive collective-bargaining representative of the employees in said unit.

(2) Granting wage and other benefit increases to the employees in the unit without prior notice to the Union and without having afforded the Union opportunity to negotiate and bargain on such matters as the exclusive collective-bargaining representative of the unit employees. The appropriate collective-bargaining unit is:

> *INCLUDED*: All production and maintenance employees, including Company temporary employees.
>
> EXCLUDED: All other employees including agency temporary employees, research and development em-

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ployees, production contract department employees, office clerical employees, guards and supervisors as defined in the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its Lancaster, Pennsylvania facility copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of those rights by telling our employee that we have stopped negotiating with District Lodge #98, International Association of Machinists & Aerospace Workers, AFL–CIO or by telling our employees that we have no intention of resuming bargaining with the Union, at a time when we have a lawful obligation to recognize and bargain with the Union.

WE WILL NOT inform our employees that they will be receiving increased benefits because the Union no longer represents them when, in fact, the Union lawfully does represent them.

WE WILL NOT refuse to bargain with the Union by withdrawing recognition of the Union as the exclusive collective-bargaining representative of the employees in the unit described below, and by thereafter failing and refusing to recognize the Union as the exclusive collective-bargaining representative of the employees in said unit, at a time when we are not lawfully permitted to do so.

WE WILL NOT grant wage or other benefit increases to our employees in the unit described below without prior notice to the Union and without having affording the Union an opportunity to negotiate and bargain on such matters as the exclusive collective-bargaining represetative of our employees in said unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL, on request, bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with District Lodge #9 International Association of Machinists & Aerospace Workers, AFL–CIO as the exclusive collective-bargaining represetative of our employees in the bargaining unit described below.

WE WILL regard the Union as the exclusive bargaining agent of the employee in the bargaining unit described below as if the Union's initial year of certification has been extended for an additional 6 months from the commencement of bargaining pursuant to the Board's Order in this case. If an understanding is reached, WE WILL embody it in a written, signed agreement, WE WILL reinstitute, and reoffer, our March 15, 1990 offer to the Union, and WE WILL give the Union a reasonable amount of time to accept that offer or to make counterproposals in light of changed circumstances. The bargaining unit is:

> *INCLUDED*: All production and maintenance employees, including Company temporary employees.
>
> *EXCLUDED*: All other employees including agency temporary employees, research and development employees, production contract department employees, office clerical employees, guards and supervisors as defined in the Act.

STAR DENTAL PRODUCTS, A DIVISION OF DEN-TAL-EZ, INC.